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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MARTIN WILLIAM JUAREZ, Defendant and Appellant.	F070001 (Super. Ct. No. BF144862A) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Kern County. Michael G. Bush, Judge.

Rebecca P. Jones, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Doris A. Calandra and Julie A. Hokans, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Gomes, Acting P.J., Franson, J. and Peña, J.

Appellant Martin William Juarez appeals the denial of his motion to suppress the results of a warrantless blood test taken after he was arrested for driving under the influence (DUI). Appellant claims the police lacked the exigent circumstances necessary to conduct a warrantless search and that a search should not be permitted under the good faith exception to the warrant requirement. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

At approximately 3:49 a.m., on the morning of October 29, 2012, a major traffic collision occurred in Kern County. Appellant ran a red light and drove his car on the wrong side of the road until he swerved into an oncoming vehicle. In the resulting collision, the driver of the other vehicle was killed, and four others in her car were injured.

When police arrived a few minutes later, appellant was seen exiting his car through the passenger-side door. Appellant ignored orders from the police to stop but was quickly detained. At that time, the detaining officer noticed a strong smell of alcohol on appellant's breath and coming from his person. Appellant was then turned over to another officer for a DUI evaluation. That officer found appellant to have "bloodshot, watery eyes, thick, slurred speech, and an odor of alcohol about his breath and person." Appellant also had difficulty walking on his own and showed signs of impairment during a horizontal gaze nystagmus test.

Appellant was placed under arrest at approximately 4:30 a.m. He was then transported by ambulance to Kern Medical Center (KMC) for treatment of his injuries. On the ride to KMC, appellant admitted the alcohol he had consumed "fucked [him] up." At KMC, appellant refused to voluntarily submit to a blood or breath test. At 5:08 a.m., he was subjected to a nonconsensual blood draw completed by a registered nurse.

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1 The facts in this case have been taken from the hearing on appellant's motion to suppress.

Bakersfield Police Sergeant Kevin Demestihas testified regarding the police response to the accident scene and the typical procedures for obtaining a warrant at the time of the accident. Sergeant Demestihas explained that the crime scene was extensive and fluid. A substantial portion of roadway had to be closed, and the police were significantly shorthanded at the time, with "most of the city officers working on that scene that night." It took nearly an hour to close the road, and Sergeant Demestihas made multiple requests for additional resources.

With respect to warrant procedures, Sergeant Demestihas explained that an officer would need approximately two hours to prepare a warrant such that it could be presented to a judge for signature, although some portion of this time would be spent driving the warrant to the judge. As part of the preparation process, an officer would need to return to the police station, draft the warrant, and have a supervisor approve the draft. Sergeant Demestihas noted an additional officer would have been required to allow for this process to occur and estimated this would have "put us … three, four, five hours out."

Upon completion of the suppression hearing, the trial court concluded exigent circumstances excused the warrantless nature of the blood test. Appellant subsequently plead guilty to the charge of gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a)) and admitted one enhancement for fleeing the scene following a vehicular manslaughter (Veh. Code, § 20001, subd. (c)), two enhancements for inflicting great bodily injury (Pen. Code, § 12022.7), and two enhancements for causing death or great bodily injury while driving under the influence (Veh. Code, § 23558), conditioned upon a total sentence of 23 years. This appeal timely followed.

DISCUSSION

Appellant contests the ruling on his motion to suppress. Appellant contends the People failed to present sufficient evidence to demonstrate an exigency excusing the lack of a warrant for his blood test. Appellant further argues officers are not entitled to rely

upon the good faith exception to the warrant requirement because there has been no change to the law on determining whether a warrant is required for blood tests.

Standard of Review and Applicable Law

Our standard of review for a motion to suppress is governed by well-established principles. (*People v. Ormonde* (2006) 143 Cal.App.4th 282, 290.) We defer to the trial court's factual findings and independently apply the requisite legal standard to the facts presented. (*People v. Celis* (2004) 33 Cal.4th 667, 679.) "On appeal we consider the correctness of the trial court's ruling *itself*, not the correctness of the trial court's *reasons* for reaching its decision." (*People v. Letner* (2010) 50 Cal.4th 99, 145.)

The Fourth Amendment bars unreasonable searches and seizures. (*Maryland v. Buie* (1990) 494 U.S. 325, 331.) " ' "[W]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, … reasonableness generally requires the obtaining of a judicial warrant." [Citation.]' [Citation.] 'Search warrants are ordinarily required for searches of dwellings, and *absent an emergency*, no less could be required where intrusions into the human body are concerned.' " (*People v. Jimenez* (2015) 242 Cal.App.4th 1337, 1361 (*Jimenez*).)

To remedy Fourth Amendment violations, "the United States Supreme Court 'establish[ed] an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial.' " (*Jimenez*, *supra*, 242 Cal.App.4th at p. 1364.) Relevant to this appeal, the good faith exception holds that " 'searches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule.' " (*Id.* at p. 1365.)

The Good Faith Exception Applies in This Case

Appellant's primary argument alleges the warrantless testing of his blood was improper under long-standing jurisprudence, including the recent United States Supreme Court precedent of *Missouri v. McNeely* (2013) ___ U.S. ____, 133 S.Ct. 1552, 1563 (*McNeely*), which holds that the mere natural dissipation of alcohol in the human body

does not suffice to demonstrate exigent circumstances justifying a warrantless search. However, we need not reach that argument here. As appellant recognizes, we may affirm in this matter on any basis contained within the record, including the good faith exception to the warrant requirement.

In this case, the contested warrantless blood test occurred prior to the United States Supreme Court's decision in *McNeely*. At that time, California courts had been applying a different test for analyzing warrantless blood tests conducted subsequent to arrest in DUI cases. Following *Schmerber v. California* (1966) 384 U.S. 757, the United States Supreme Court's previous discussion of warrantless blood tests, courts in California regularly referred to the relevant standard as that identified by the California Supreme Court in *People v. Superior Court* (*Hawkins*) (1972) 6 Cal.3d 757, 761 (*Hawkins*): "It is clear that the Fourth Amendment does not bar a compulsory seizure, without a warrant, of a person's blood for the purposes of a blood alcohol test to determine intoxication, provided that the taking of the sample is done in a medically approved manner, is incident to a lawful arrest, and, is based upon the reasonable belief that the person is intoxicated." (See, e.g., *People v. Ritchie* (1982) 130 Cal.App.3d 455, 458.)

Appellant does not contest that under this standard, the warrantless testing of his blood was proper. Rather, appellant argues that California courts have been consistently misreading or misapplying *Schmerber* since its release. Under this theory, *McNeely* did not effectuate a change in the law sufficient to support the good faith exception because the California legal standards were an improper recitation of the controlling law laid down in *Schmerber*. We disagree.

In our recent opinion in *Jimenez*, we considered whether *McNeely* effectuated a change from the binding legal precedent in California, beginning with *Schmerber* and including key interim California appellate and Supreme Court opinions. (*Jimenez*, *supra*, 242 Cal.App.4th at pp. 1360-1365.) In that analysis, we concluded that *McNeely* did, in

fact, repudiate 50 years of California precedent following *Schmerber*. (*Jimenez, supra,* at pp. 1362-1363.) Accordingly, where the facts showed officers acting appropriately under the *Hawkins* test for initiating a warrantless blood test, we affirmed the denial of a motion to suppress under the good faith exception. (*Jimenez, supra*, at p. 1365.)

We see no reason to revisit our prior analysis in this case. Whether or not California courts had been misreading or misapplying *Schmerber*, the binding precedent in California since at least 1972 has been the test identified in *Hawkins*. Given the evidence that appellant was visibly intoxicated, was under arrest for driving under the influence, and that his blood draw was conducted by a medical professional at a hospital, we conclude officers could have reasonably believed an emergency existed that permitted a warrantless blood test to avoid the destruction of evidence. (See *Jimenez, supra*, 242 Cal.App.4th at p. 1365.) The good faith exception to the warrant requirement applies.

DISPOSITION

The order denying appellant's motion to suppress is affirmed.